



# PUBLIC NOTICE

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FCC 04-283

Released: December 15, 2004

## **FEDERAL COMMUNICATIONS COMMISSION ANNOUNCES WAIVER RELIEF FOR UNTIMELY NOTIFICATIONS OF CONSUMMATION OF WIRELESS LICENSE ASSIGNMENT AND TRANSFER OF CONTROL APPLICATIONS**

The Federal Communications Commission (Commission) hereby announces that for a period of ninety (90) calendar days beginning with the release date of this *Public Notice*, i.e., from December 15, 2004, until March 15, 2005, the Commission will waive Section 1.948(d) of its Rules, 47 C.F.R. § 1.948(d), so that parties to certain license assignment and transfer of control applications previously consented to by the Wireless Telecommunications Bureau (Bureau) may file untimely notifications of the consummation of such transactions.<sup>1</sup> Provided that the transaction in question was consummated within the 180-day period specified in Section 1.948(d), any such notification of consummation filed during the waiver period will be processed without sanction. Subsequent to this ninety-day period, the deadlines set forth in Section 1.948 will be strictly enforced.

Section 1.948(d) of the Commission's Rules specifies in pertinent part:

In all Wireless Radio Services, licensees are required to notify the Commission of consummation of an approved transfer or assignment using FCC Form 603. The assignee or transferee is responsible for providing this notification, including the date the transaction was consummated. For transfers and assignments that require prior Commission approval, the transaction must be consummated and notification provided to the Commission within 180 days of public notice of approval, and notification of consummation must occur no later than 30 days after actual consummation, unless a request for an

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<sup>1</sup> This waiver applies to notifications of consummation of assignments or transfers of control of licenses in all Wireless Radio Services except the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Multichannel Multipoint Distribution Service. The Bureau has undertaken a separate proceeding to confirm the accuracy and completeness of the licensing information for those services. *See, e.g.,* Wireless Telecommunications Bureau Announces Action on Responses to Public Notice Regarding ITFS, MDS, and MMDS Pending Applications, *Public Notice*, 18 FCC Rcd 12277 (WTB 2003).

extension of time to consummate is filed on FCC Form 603 prior to the expiration of this 180-day period.

Currently, the Bureau's Universal Licensing System (ULS) indicates that there are hundreds of assignment and transfer of control applications that have been consented to by the Bureau more than six months ago, but for which the Bureau has received neither a timely notification of consummation nor a timely request for an extension of time to consummate. As a consequence, the status of a growing number of licenses included on such applications remains uncertain. In this regard, for example, we note that when the Bureau does not receive a notification of consummation of an approved assignment application, the licensee of record prior to the filing of the application remains the licensee of record. We are concerned that, in many cases, the transaction may have been consummated and the assignee listed in such an application may have assumed the rights and responsibilities of the licensee. Unless we are notified of this consummation, however, the ULS database will continue to list the assignor as the licensee of record.

It is critical that the Commission be able to identify, and to contact as needed, the entity authorized in fact to control a Commission-licensed facility. Following the ninety-day period referenced above, therefore, the Bureau will strictly enforce the requirements of Section 1.948(d). Accordingly, any wireless license assignment or transfer of control application for which the Bureau does not receive a timely notification of consummation or request for an extension of time to consummate pursuant to Section 1.948(d) will be subject to dismissal. We believe this action is warranted as a measure for dealing with the growing number of instances in which applicants fail to file a timely notification of consummation of an approved assignment or transfer of control, particularly since the problem has continued even after the Commission amended Section 1.948(d) in 1999 to extend the period for consummating a transaction, and filing a notification of such consummation, from 60 days to 180 days.<sup>2</sup>

For reasons of efficiency and equity, however, we also believe that it would be beneficial to provide for a limited waiver of Section 1.948(d) prior to the Bureau's strict enforcement of this rule. Accordingly, we are establishing a ninety-day waiver period, beginning on the release date of this *Public Notice*. During this ninety-day waiver period, any entity that timely consummated an approved assignment or transfer of control application, but failed to file a timely notification of consummation of the transaction, should file such a notification of consummation on FCC Form 603. During the waiver period, such notifications of consummation will be accepted and processed by the Bureau, even without an individualized waiver request, notwithstanding that the notification would be considered late-filed under Section 1.948(d). Pursuant to this general waiver, the assignee/transferee filing the notification may be assured that the notification will be processed in due course and that it will be reflected in ULS. The waiver will apply to notifications of consummation that are pending before the Commission as of the date of this *Public Notice*, as well as to notifications of consummation that are filed during the 90-day waiver period. Following expiration of the 90-day period, however, approved applications for which a notification of consummation remains unfiled for more than 180 days will be subject to dismissal for failure to comply with Section 1.948(d), and untimely

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<sup>2</sup> See Amendment of Section 1.948(d) of the Commission's Rules to Extend the Time for Consummation and Notification of Wireless Transfers and Assignments, *Order*, 14 FCC Rcd 18828 (1999).

notifications of consummation will not be accepted unless accompanied by a request for waiver of that rule.<sup>3</sup> *In cases where the applicants no longer intend to consummate an approved transaction, we encourage the applicants to withdraw the underlying assignment or transfer of control application in order to remove any uncertainty as to the status of the subject license(s).*

We emphasize that applicants may avail themselves of this waiver only if the transaction proposed in the approved assignment or transfer of control application was indeed consummated within the 180-day period specified in Section 1.948(d). Applicants that do not qualify for the waiver relief set forth in this *Public Notice* should submit late-filed notifications of consummation (or, as appropriate, late-filed requests for an extension of time to consummate) that are accompanied by an individualized request for a waiver of Section 1.948(d).<sup>4</sup> Such waiver requests will be evaluated on a case-by-case basis in accordance with the waiver criteria set forth in Section 1.925(b)(3) of the Commission's Rules, 47 C.F.R. § 1.925(b)(3). We note that even if the waiver is granted, the applicant may nonetheless be subject to sanctions, including, without limitation, a Notice of Apparent Liability for a Forfeiture, for the violation of Section 1.948(d). For additional information or assistance regarding filing requests for waivers of Section 1.948(d), requests for an extension of time to consummate and related pleadings, you may visit the web at <http://esupport.fcc.gov>, e-mail questions to [ULSHELP@fcc.gov](mailto:ULSHELP@fcc.gov), or call the FCC Support Center at (877) 480-3201 (TTY 202-414-1255) and select from the options menu. Support Center hours are from 8 a.m. to 5:30 p.m. Eastern Time, Monday through Friday (except Federal holidays). To provide quality service and ensure security, all telephone calls are recorded.

Finally, we note that a proposed assignee/transferee's assumption of control over licensed facilities may be deemed unauthorized operation if the underlying assignment or transfer of control application is dismissed for failure to file a timely notification of consummation. Such unauthorized operation may subject the parties to additional sanctions, and it may be necessary for the assignee/transferee to apply for and receive Special Temporary Authority (STA) to operate the facilities. The parties would then need to file a new application for assignment or transfer of control of the license(s).

For further information, contact Jeff Tobias, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, at (202) 418-1617, Denise Walter, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-0359, or Elizabeth Fishel, Broadband Division, Wireless Telecommunications Bureau at (202) 418-2487.

Action Taken by the Commission on December 8, 2004: Chairman Michael K. Powell, Commissioners Kathleen Q. Abernathy, Michael J. Copps, Kevin J. Martin, Jonathan S. Adelstein.

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<sup>3</sup> See *id.* at 18829 ¶ 3 (explaining that “[i]f parties fail to consummate and notify the Commission within 180 days, or fail to request an extension within the 180 day period, approval of the transfer or assignment will automatically be rescinded”).

<sup>4</sup> A late-filed notification for a transaction that was not consummated within the 180-day period will be subject to dismissal if not accompanied by a waiver request. In such a case, the underlying application also may be subject to dismissal, and the applicants may be subject to sanction.